



Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 120809321-2321-01

RIN 0648-BC26

Gulf of the Farallones and Monterey Bay National Marine Sanctuaries Regulations on Introduced Species

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: NOAA proposes to amend the terms of designation and regulations regarding the introduction of introduced species into Gulf of the Farallones and Monterey Bay national marine sanctuaries (GFNMS and MBNMS, respectively). NOAA proposes to apply the regulations to the entirety of both sanctuaries and provide exceptions for) striped bass; and mariculture activities in Tomales Bay. This action would make the regulation of introduced species consistent in all four of the national marine sanctuaries off of California.

DATES: Comments on this proposed rule will be accepted on or before midnight on *[INSERT 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by **NOAA-NOS-2012-0113**, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NOS-2012-0113.

0113, click the “Comment Now!” icon, complete the required fields and enter or attach your comments.

- Mail: Dave Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE200K, Monterey, CA 93940.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by ONMS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. ONMS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

You may obtain copies of the original final environmental impact statement, record of decision, or other related documents through the following website:

<http://sanctuaries.noaa.gov/jointplan>.

FOR FURTHER INFORMATION CONTACT:

Dave Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE 100F, Monterey, CA 93940. (831) 647-1920.

SUPPLEMENTARY INFORMATION:

I. Background

A. GFNMS and MBNMS Background

The National Oceanic and Atmospheric Administration (NOAA) established Gulf of the Farallones National Marine Sanctuary (GFNMS) in 1981 to protect and preserve a unique, productive and fragile ecological community, including the largest seabird colony in the contiguous United States and diverse and abundant marine mammals. GFNMS lies off the coast of California, to the west and north of San Francisco, and is composed of 1,279 square statute miles (966 square nautical miles) of offshore waters and submerged lands thereunder. The sanctuary boundary extends out to and around the Farallon Islands and nearshore waters (up to the mean high water line) from Bodega Head to Rocky Point in Marin County. For more information about GFNMS, see <http://farallones.noaa.gov>.

NOAA established Monterey Bay National Marine Sanctuary (MBNMS) in 1992 for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area. MBNMS is located offshore of California's central coast, adjacent to and south of GFNMS. It spans a shoreline length of approximately 276 statute miles (240 nautical miles) between Rocky Point in Marin County and Cambria in San Luis Obispo County. The sanctuary encompasses approximately 6,094 square statute miles (4,602 square nautical miles) of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 statute miles (26 nautical miles) from shore. The Davidson Seamount is also part of the sanctuary, though it does not share a contiguous boundary. Supporting some of the world's most diverse and productive marine ecosystems, MBNMS is home to numerous mammals, seabirds, fishes, invertebrates, sea turtles and plants in a remarkably productive coastal environment. For more information about MBNMS, please see <http://montereybay.noaa.gov>.

B. Inconsistencies Among Terms of Designation and Regulations Due to the Governor's Objection

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 et seq.; NMSA), NOAA conducted a joint review of the management plans for Gulf of the Farallones, Monterey Bay and Cordell Bank national marine sanctuaries (referred to here as the “Joint Management Plan Review (JMPR)”). This multi-year process updated the management plans and regulations for these sanctuaries and enabled NOAA to ensure consistency across the region. On November 20, 2008, NOAA published the final rule and terms of designations for the JMPR (73 FR 70488) and published the revised management plans.

One of the key issues that came up during this process was the threat posed by introduced species. As a result, NOAA changed the terms of designation for GFNMS and MBNMS to clearly allow regulation of introduced species. NOAA’s regulations prohibited the introduction of introduced species into the sanctuaries with exceptions for striped bass caught and released during fishing and current state-permitted mariculture activities that cultivate introduced species in GFNMS’s Tomales Bay. The regulations define introduced species as non-native species or any organism that has been genetically modified (15 CFR 922.81). This final rule, combined with a similar management plan and regulatory review for the Channel Islands National Marine Sanctuary (CINMS), resulted in the same, uniform regulation of introduced species in all four of the national marine sanctuaries off of California.

The proposed and final regulations for the JMPR were drafted with a significant level of input from State agency staff and commissions. For example, during consultations with the State of California, concern was expressed that striped bass would be defined as an introduced species and that an angler who catches and then releases a striped bass to comply with State-imposed

size restrictions would be in violation of the proposed regulation. Because prohibiting such activity was not NOAA's intent, NOAA drafted the regulation to except striped bass, the only introduced species for which there is an active fishery.

During the comment period on the proposed rule for the JMPR, NOAA received comments from the California Department of Fish and Game (CDFG), the California Department of Boating and Waterways (CDBW), the California Coastal Commission (CCC), and the California State Lands Commission (CSLC). The CDFG and CDBW both expressed concerns with NOAA's proposed prohibition on the introduction of introduced species but the CCC was explicitly supportive of it. The CCC—exercising its authority under the Federal consistency provisions of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 et seq.)—specifically rejected the position taken by CDFG and advised that NOAA must maintain the prohibition on introduced species as it was published in the proposed rule. If NOAA revised the regulations to address CDFG's concerns, the CCC indicated that the final regulations would not be consistent with the enforceable policies of the California Coastal Management Program. Under the CZMA and implementing regulations, federal agency actions (such as NOAA's proposed regulations) that affect any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program. 16 U.S.C. 1456(c). Therefore, NOAA concluded that its final action needed to retain the prohibition as set forth in the proposed rule in order to be consistent with the California Coastal Management Program. The position of the State of California overall on this regulation was inconsistent and not clear to NOAA until the Governor's objection letter was received after the final rule was issued.

Pursuant to section 304(b) of the NMSA, changes to a sanctuary's terms of designation and the associated regulations do not become effective until after forty-five days of continuous session of Congress. After forty-five days, in this case on March 9, 2009, the regulations would become final and take effect, except that any term of designation the Governor certified as unacceptable (i.e., objected to) would not take effect in the area of a sanctuary lying within the seaward boundary of the state ("state waters"). If exercised, the effect of a gubernatorial objection is that the term(s) of designation does not become effective in state waters. Regulations that are based on the terms of designation that are certified as unacceptable by the governor also do not become effective in state waters.

On December 23, 2008, during the review period for the final rule, Governor Schwarzenegger objected to the terms of designation for MBNMS and GFNMS that would have allowed NOAA to regulate the "introduction of introduced species" in those sanctuaries. The governor's objection was conditional: it would not apply if NOAA were willing and able to modify its regulations to except (i.e., allow) all state-permitted aquaculture activities in the two sanctuaries and research involving the introduction of introduced species in MBNMS. During that same time period, however, the Governor did not object to the term of designation for CINMS regarding introduced species, which remained applicable in the State waters of that sanctuary.

After receiving the Governor's objection, NOAA worked with staff from the California Natural Resources Agency and the California Department of Fish and Game to find solutions to the Governor's concerns that would also meet NOAA's goals. For GFNMS, NOAA proposed to modify the regulations on introduced species to except state-permitted aquaculture in all state waters of the sanctuary and also agreed to not enforce the introduced species provisions in the

state waters of GFNMS until such new rulemaking could be conducted and public comment on the matter could be considered.

For MBNMS, NOAA was willing to amend the regulations to include the same exception for state-permitted aquaculture in state waters. NOAA could not agree, however, to also establish an exception for state-permitted research involving the introduction of introduced species in the MBNMS, as the Governor requested. Neither the Governor nor the state agencies with which NOAA worked provided any description of how this exception would be used, what types of research activities would qualify, or what its effect would be on sanctuary resources. Because no compromise was attained, the Governor's objection applied to the term of designation for the regulation of introduced species in the state waters of MBNMS. As indicated in the notice of effective date (March 23, 2009; 74 FR 12088), the regulation of the introduction of introduced species from within or into MBNMS does not apply in state waters of the sanctuary; it is valid and in effect only in the federal waters of the sanctuary (i.e., the area lying beyond the seaward boundary of the state).

In response to the Governor's objection and based upon discussions with the state, on October 1, 2009, NOAA issued a proposed rule (74 FR 50740) to modify the introduced species regulations to allow all state-permitted aquaculture activities in the state waters of GFNMS, and to clarify that the prohibition against release of introduced species did not apply in state waters of MBNMS.

NOAA took this action because, as previously noted, the then-Governor's objection to the new terms of designation for GFNMS and MBNMS prevented the introduced species regulations from applying within state waters of the two sanctuaries. For GFNMS, the October 2009 proposed rule was NOAA's effort to meet the Governor's concerns while still meeting

NOAA's goals. As also previously noted, NOAA was not able to reach an acceptable basis that would meet the Governor's demand for an exception to the prohibition that would allow research involving these species within state waters of MBNMS. As a result, the proposed rule restricted the application of the introduced species prohibition to the federal waters of the MBNMS.

No further information was provided to NOAA during the comment period for this rule making to address concerns over the introduction of introduced species into state waters or to specifically address research involving introduced species in MBNMS. For this and other reasons described in a related notice published elsewhere in today's Federal Register, NOAA has withdrawn the October 2009 proposed rule described above. The legal effect of this withdrawal action is that the Governor's letter of December 23, 2008, certifies as unacceptable the terms of designation for GFNMS and MBNMS regarding the regulation of introduced species in the two sanctuaries and modifies the terms of designation for each sanctuary by limiting the application of terms regarding introduced species to federal waters. By operation of law under the National Marine Sanctuaries Act, the Governor's certification as unacceptable revised the terms of these designations to read as, "Introducing or otherwise releasing from within or into the Federal waters of the sanctuary an introduced species." As a result, the regulations implementing these terms do not apply in state waters in either GFNMS or MBNMS (15 CFR 922.82(a)(10) and 922.132(a)(12), respectively).

The net result of the Governor's objections to terms of designation for GFNMS and MBNMS is that the four national marine sanctuaries offshore of California have an inconsistent

patchwork of regulations controlling the introduction of introduced species. The natural resources of the two sanctuaries lacking such prohibitions in state waters – GFNMS and MBNMS – remain at risk. The original premise behind the regulatory controls on the introduction of introduced species remains valid and such regulations necessary.

NOAA now proposes to amend the terms of designations for both sanctuaries regarding introduced species and the associated regulations prohibiting the introduction of such species within or into both the federal and state waters of the sanctuaries. This action would reinstate the terms of designations and regulations as they were promulgated for both sanctuaries in the final rule published on November 20, 2008, with a minor adjustment to the spatial exception for GFNMS. The re-proposed GFNMS regulation on the introduction of introduced species would extend the geographic exception to allow introduced species mariculture projects in all of Tomales Bay, rather than restricting the geographic exception to leases for introduced species mariculture projects in Tomales Bay existing at the time the regulation takes effect. NOAA and the State of California have also agreed to develop a Memorandum of Agreement (MOA) to describe how the state will consult with GFNMS in the future should it consider any permit or lease agreement for a new or expanded introduced species mariculture project in Tomales Bay.

This action is supported by the administrative record and NEPA documentation compiled for the previous final rule. NOAA would amend the record of decision to address the minor change proposed in the action for GFNMS. (See discussion in section IV below)

II. Need for an Introduced Species Regulation in State Waters of Both Sanctuaries

The term “introduced species” is defined as: (1) any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or (2) any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes. 15 CFR 922.81 (GFNMS) and 922.131 (MBNMS). These definitions would not be affected by this proposed action.

NOAA promulgated the restriction against introduced species due to the threats introduced species pose to endangered species, native species diversity and the composition and resilience of natural biological communities. For example, a number of non-native species now found in the Gulf of the Farallones and Monterey Bay regions were introduced elsewhere on the West Coast but have spread through vectors such as vessel hull-fouling, ballast water discharge, and accidental introductions. NOAA also believes that introduced species are a major economic and environmental threat to the living resources and habitats of a sanctuary as well as the commercial and recreational uses that depend on these resources. Once established, introduced species can be extremely difficult, if not impossible, to eradicate. Introduced species have become increasingly common in recent decades, and the rate of invasions continues at a rapid pace. Introduced species pose a significant threat to the natural biological communities and ecological processes of GFNMS and MBNMS and may have a particularly large impact on threatened and endangered species found in these sanctuaries.

The introduced species regulations were developed with considerable public review, as well as input from the Sanctuary Advisory Councils and an introduced species working group of the Sanctuary Advisory Council for MBNMS. NOAA has also worked closely with agencies of the State of California in controlling introduced species introductions. For example, the

definition of an introduced species is modeled on regulations enforced by the California Department of Fish and Game (14 CA A.D.C. § 236.1). Additionally, NOAA originally crafted the regulation to be consistent with other state restrictions on introduced species. These include California State Lands Commission rules limiting ballast water exchange to reduce the risk of introducing non-native species in state waters.

The California Coastal Commission has consistently supported NOAA's regulations on introduced species as they were promulgated in 2008. The Coastal Commission concluded that the introduced species regulations, to which the Governor expressed opposition, were consistent with the California Coastal Management Plan. Therefore, NOAA believes that this proposed action would be more consistent with the implementation of the Coastal Management Plan by the California Coastal Commission than limiting the regulations to only the federal waters of the sanctuaries.

This action would make regulations regarding introduced species consistent in the four national marine sanctuaries off of California (Cordell Bank, Gulf of the Farallones, Monterey Bay, and Channel Islands) and would avoid a result in which release of introduced species would be allowed in California state waters of some sanctuaries but entirely prohibited throughout other sanctuaries. NOAA believes that this would improve public understanding and compliance with this restriction and that it would also facilitate enforcement efforts. Creating consistent regulatory language was one of the goals of the JMPR and this proposed rule would advance that important regulatory goal. After careful consideration and review, NOAA has determined that it is appropriate in this instance to modify the terms of designations for these sites and re-propose the regulations that would implement them.

III. Summary of the Revisions to MBNMS Terms of Designation and Regulations

As modified by Governor Schwarzenegger's objection, the terms of designation for MBNMS currently authorize the regulation of "introducing or otherwise releasing from within or into the federal waters of the Sanctuary an introduced species." NOAA proposes to change the terms of designation of MBNMS to remove the geographic restriction, thereby including the state waters of the sanctuary. The revised term of designation under Article IV Scope of Regulations, Section 1 Activities Subject to Regulation, Activity (a)(1) would read as follows:

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

(a) ***

- (i) Introducing or otherwise releasing from within or into the Sanctuary an introduced species.**

NOAA also re-proposes the regulation that would implement this revised term of designation for MBNMS. Because the Governor's objection revised and limited the geographic scope of the term of designation regarding introduced species, as explained above, the introduced species regulation for MBNMS prohibits releasing only from within or into the federal waters of the Sanctuary an introduced species, except striped bass (Morone saxatilis) released during catch and release fishing activity. By re-proposing the original regulation (issued in 2008), NOAA is ensuring that the regulation would apply throughout the entire Sanctuary, including the State waters in MBNMS.

The re-proposed regulatory language for MBNMS is identical to that published in the final rule of November 20, 2008 (74 FR 70488), and would read as follows:

“(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (*Morone saxatilis*) released during catch and release activity;”

IV. Summary of the Revisions to GFNMS Terms of Designation and Regulations

For the same reasons explained above regarding the proposed changes to the MBNMS terms of designation and regulations, NOAA proposes to similarly amend the terms of designation and regulations for GFNMS regarding introduced species. Because the October 1, 2009 proposed rule was never made final and has now been withdrawn, the Governor’s conditional objection to the term of designation regarding introduced species also applies to GFNMS. As a result of his objection, this term of designation for GFNMS currently reads, “introducing or otherwise releasing from within or into the federal waters of the Sanctuary an introduced species.” NOAA proposes to change the terms of designation of GFNMS to remove the geographic restriction and to include the state waters of the sanctuary. The revised term of designation under Article IV Scope of Regulations, Section 1 Activities Subject to Regulation, Activity (a)(1) would read as follows:

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

(a) ***

- (i) Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

NOAA also re-proposes the regulation that would implement this revised term of designation for GFNMS. As in MBNMS, the Governor’s objection limited the geographic scope of the term of designation regarding introduced species and the introduced species regulation for

GFNMS prohibits releasing only from within or into the federal waters of the Sanctuary an introduced species, except striped bass (Morone saxatilis) released during catch and release fishing activity. The exception regarding mariculture activities in Tomales Bay currently has no application because the regulation does not apply in State waters. Through this action, NOAA is proposing that the regulation regarding introduced species would apply throughout the entire Sanctuary, including the State waters in GFNMS. The only modification NOAA proposes from the original (2008) regulation would be to provide an exception for introduced species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California.

Beyond the catch and release of striped bass, NOAA has always intended to have an exception in GFNMS for the continuation of mariculture projects within Tomales Bay, where presently triploid, non-native oysters are farmed on 12 leases that are held by 6 companies. NOAA believes that continuation of these operations, consistent with existing permits issued by the State of California, is acceptable and will not adversely harm sanctuary resources. NOAA is also proposing that other introduced species aquaculture projects approved by the State of California be allowed in Tomales Bay. The State has agreed to consult with NOAA about those projects in advance of any decision. This would allow small businesses to continue operations and grow oysters for sale, and to have this area within the sanctuary available for future related projects, with state approval. NOAA is developing a Memorandum of Agreement with the State of California to formalize the consultation requirement for any new permit decision in Tomales Bay related to introduced species mariculture. This will provide significant protection to Tomales Bay from the introduction of introduced species while minimizing economic impacts to local mariculture businesses.

NOAA does not believe the change in the proposed action – to provide a geographic exemption for introduced species mariculture within Tomales Bay – is substantial or relevant to environmental concerns for purposes of NEPA regulations at 40 CFR1502.9. NOAA notes that this change is within the range of alternatives considered in the September 2008 final environmental impact statement (FEIS) associated with the previous version of the regulation. Currently, there is no regulatory protection from the introduction of introduced species in the state waters of the sanctuary, including in Tomales Bay. This is discussed in the no-action alternative in the FEIS (Sections 3.3.6 (p. 3-54), 3.5.4 (p. 3-92), and 3.7.5 (p. 3-131)).

Presently 23.6 percent of GFNMS - all of the state waters (301.5 square statute miles) – is at risk from the introduction of an introduced species in GFNMS. With this new regulation, all of that area and hence all of the sanctuary would be protected from such introductions, except for less than 1 percent (10.3 square statute miles) in Tomales Bay where introduced species mariculture, approved by the state after consulting with GFNMS, would be allowed. However, under this proposed rule Tomales Bay would receive significant protection from all other vectors of introduction of introduced species.

In addition, the March 23, 2009, notice of effective date expresses NOAA’s belief that the “state’s existing review process for aquaculture projects provides NOAA with some level of assurance that NOAA has an opportunity to provide input and can minimize the potential for harm to sanctuary resources from an introduced species aquaculture project.” (74 FR 12089). The MOA that will be developed with the state requiring consultation with NOAA will ensure NOAA concerns within this portion of the GFNMS are properly addressed.

The proportion of activities involving introduction of introduced species through state-issued mariculture permits in Tomales Bay is only a small fraction of the activities that could

potentially harm the resources in the sanctuary. The additional, suitable habitat in Tomales Bay that would be available for development under the proposed exception is limited; much of the shore is owned by Point Reyes National Seashore, and thus unavailable for development.

As discussed in the final rule and FEIS, broadening the exception beyond just the area of existing permits would allow the existing operations to expand their usable footprints if the need is warranted and permitted by the state (73 FR 70518-70519, and Chapter 7, Response to comments (p. 7-33, respectively). Those previous discussions acknowledged that the sanctuary prohibition could restrict business plans for expansion in Tomales Bay and potentially limit future operations, and the proposed exemption for that area would remedy that concern.

Therefore, the re-proposed regulatory language for GFNMS would be similar to that published in the final rule of November 20, 2008 (74 FR 70488), and would read as follows:

“(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species except:

- (i) Striped bass (*Morone saxatilis*) released during catch and release activity; or
- (ii) species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Tomales Bay is defined in §922.80. The coordinates for the northern terminus of Tomales Bay are listed in appendix D to this subpart. Pursuant to the memorandum of agreement executed between the State of California and NOAA, the State will consult with the Director before issuing any permit, lease or other authorization for mariculture in Tomales Bay involving the cultivation of introduced species.”

In addition, NOAA proposes to codify the geographical extent of Tomales Bay for the purposes of this regulation, with the addition of an Appendix D to Subpart H of Part 922.

NOAA proposes to use the same demarcation line for Tomales Bay that is already used in the International Regulations for Preventing Collision at Sea 1972 (COLREGS): the line would intersect the GFNMS boundary near Avila Beach (west) end at approximately 39.23165 N, 12.97545 W and intersect the GFNMS boundary at the mean high water line at the Sand Point (east) end at approximately 38.23165 N, 122.96955 W. Tomales Bay constitutes the approximately 10.3 square statutory miles of state waters, and submerged lands thereunder, that lie landward (south and east) of this demarcation line.

Last, NOAA will enter into a Memorandum of Agreement (MOA) with the State of California to implement the Department of Fish and Game's commitment to consult with NOAA whenever a future introduced species mariculture permit application within Tomales Bay is received and being considered by the State.

V. Miscellaneous Rulemaking Requirements

A. National Marine Sanctuaries Act

Section 301 of the NMSA (16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and that the DEIS be made available to the public. NOAA prepared a Draft and Final Management Plan and a draft and final EIS on the initial proposal and final rule. Copies are available at the address and website listed in the Address section of this proposed rule. Responses to comments received on this proposed rule will be published in the preamble to

the final rule, and discussed in the record of decision that will accompany this rulemaking, and supplement the original final EIS. NOAA will make available the 2008 final environmental impact statement (FEIS) for the Jmpr that was previously made available to the public and which analyzes the environmental effects of the introduced species regulations as are re-proposed in this action.

Section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or, in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. NOAA submitted all of these documents to the Committees when the changes to the terms of designations and the implementing regulations were originally proposed in 2008. These documents have not changed and NOAA continues to rely on them for this proposed action.

B. National Environmental Policy Act

In the 2008 FEIS for the Jmpr, NOAA identified a preferred action which was to modify the terms of designation and regulations for GFNMS and MBNMS to, among other things, prohibit the introduction of introduced species (with a few exceptions) throughout the sanctuaries, and NOAA fully endorses that action as re-proposed, with minor modification, in this notice of proposed rulemaking. NOAA proposes a geographic exemption to allow ongoing and newly-permitted introduced species mariculture projects in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Pursuant to a

memorandum of agreement, the state would consult with GFNMS prior to any new permit action. NOAA believes this is within the range of alternatives considered in the FEIS, and therefore, NOAA has determined that a supplement to the FEIS is not required for this action, as the proposed action/preferred alternative has not changed for MBNMS, nor has there been a significant change in the environmental conditions or the potential environmental effects of the preferred alternative in the GFNMS.

Copies of the FEIS other related materials that are specific to this action are available at <http://sanctuaries.noaa.gov/jointplan/feis/feis.html>, or by contacting NOAA at the address listed in the Addresses section of this proposed rule. Comments regarding the introduction of introduced species portion of the original FEIS are reopened for comment.

C. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant for purposes of Executive Order 12866.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action falls within the definition of “policies that have federalism implications” within the meaning of Executive Order 13132. NOAA’s previous proposed rule and subsequent withdrawal were conducted in cooperation with the State of California, and pursuant to Section 304(b) of the NMSA. It is NOAA’s view that, because no new information has been provided regarding the regulation of introduced species, the state will not object to the re-proposed changes in this action, which would not preempt state law, but would simply update and re-establish sanctuary regulations to comport with previously issued NOAA regulations. In keeping with the intent of the Executive Order, NOAA consulted with a number of entities within the state which participated in development of the initial rule, including

but not limited to, the Governor of the State of California, the California Coastal Commission, the California Department of Fish and Game, and the California Natural Resources Agency.

E. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Using the SBA's Small Business Size Standards, NOAA determined that the small business concerns operating within both of the sanctuaries include: Commercial fishermen who vary in number seasonally and annually from approximately 300 to 500 boats; twelve mariculture leaseholders in Tomales Bay (in GFNMS); approximately 25 recreational charterfishing businesses; and approximately 7 recreational charter businesses engaged in wildlife viewing. The small organizations, as defined under 5 U.S.C. 601(4), that would be impacted by this rule include approximately 3 small organizations operating within the waters of GFNMS, which include nongovernmental organizations (NGOs) or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. The small governmental jurisdictions, as defined under 5 U.S.C. 601(5), that would be impacted by this rule are the Tomales Bay settlements that are directly adjacent to GFNMS.

The prohibition on releasing or otherwise introducing from within or into GFNMS and MBNMS an introduced species is not expected to significantly adversely impact small entities because this activity is generally not part of their business or operational practices. As NOAA analyzed in more detail in 2008, small entities whose operational practices may include catch

and release of striped bass (*Morone saxatilis*) (i.e., consumptive recreational charter businesses), would not be affected because the prohibition would not apply to the catch and release of this fish species already present in the sanctuaries. In fact, the prohibition against introduced species may result in indirect benefits for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species, which can severely affect populations of endangered species, native species diversity, and the composition and resilience of natural biological communities. Introduced species pose a major economic and environmental threat to the living resources and habitats of a sanctuary as well as the commercial and recreational uses that depend on these resources. Preventing their introduction will therefore help small entities by preventing such detrimental impacts.

The proposed prohibition is not expected to impact aquaculture leaseholders located adjacent to GFNMS. Existing leaseholders operating in Tomales Bay are excepted from the introduced species prohibition if they have active lease agreements from the State of California for cultivation of introduced species. Under the re-adoption of the 2008 final rule, as described in this proposed rule, in the GFNMS the exemption would now apply to all of Tomales Bay. Pursuant to a memorandum of agreement, the State of California would consult with NOAA prior to issuing any new leases or permits for mariculture operations in Tomales Bay involving the cultivation of introduced species. This prohibition would not put any current operations out of business, because they would not need to change anything about their current procedures to continue in their operations.

Comments received on the economic impacts of this proposed rule will be summarized and responded to in the final rule. As a result of this assessment, a regulatory flexibility analysis was not required and none was prepared.

F. Paperwork Reduction Act

This proposed rule does not contain information collections that are subject to the requirements of the Paperwork Reduction Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

VI. Request for Comments

NOAA requests comments on this proposed rule for sixty (60) days after publication of this notice.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Environmental protection, Fish, Harbors, Introduced species, Marine pollution, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Research, Water pollution control, Water resources, Wildlife.

Date: March 11, 2013.

Holly A. Bamford, Ph.D.

Assistant Administrator, National Ocean Service

National Oceanic and Atmospheric Administration

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922 — NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. In § 922.82, revise paragraph (a)(10) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (Morone saxatilis) released during catch and release fishing activity; or

(ii) Species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Tomales Bay is defined in §922.80. The coordinates for the northern terminus of Tomales Bay are listed in appendix D to this subpart. Pursuant to the memorandum of agreement executed between the State of California and NOAA, the State will consult with the Director before issuing any permit, lease or other authorization for mariculture in Tomales Bay involving the cultivation of introduced species.

* * * * *

3. Add Appendix D to Subpart H of Part 922, to read as follows:

Appendix D to Subpart H – Gulf of the Farallones National Marine Sanctuary

Tomales Bay Coordinates.

Tomales Bay is an area of approximately 10.3 square statutory miles, constituting the state waters and submerged lands thereunder lying landward (south and east) of the line connecting the following points from near Avila Beach (west) and Sand Point (east). Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No. Tomales Bay Boundary	Latitude	Longitude
--------------------------------------	----------	-----------

1	38.23165	-122.97545
2	38.23165	-122.96955

4. In § 922.132, revise paragraph (a)(12) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (Morone saxatilis) released during catch and release fishing activity.

[FR Doc. 2013-05994 Filed 03/15/2013 at 8:45 am; Publication Date: 03/18/2013]